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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/656,769	09/07/2000	James V. Albanese	ULB-002	1562

7590 10/04/2002

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EXAMINER

BOYD, JENNIFER A

ART UNIT PAPER NUMBER

1771

DATE MAILED: 10/04/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/656,769

Applicant(s)

ALBANESE ET AL.

Examiner

Jennifer A Boyd

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 26 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other.

## **DETAILED ACTION**

### ***Response to Amendment***

1. The Applicant's Amendments to claims 1, 3, 5, 7 and 10, Substitute Specification and Accompanying Remarks, filed August 28, 2002, has been entered as Paper No. 4 and has been carefully considered. The Examiner withdraws the objections to the Specification as set forth in paragraph 1 of Paper No. 3 and the request for using the suggested "Arrangement of the Specification". The Examiner withdraws the 35 USC 112, 2<sup>nd</sup> paragraph rejections of claims 1 – 21 as set forth in paragraph 4 of Paper No. 3. Amendment B is sufficient to withdraw the previous 35 USC 112, 2<sup>nd</sup> paragraph rejections of claims 3 and 19 as set forth in paragraphs 6 and 7 of Paper No. 3. Despite these advances, the invention is not found to be patentable for the reasons detailed herein below. The Applicant's Amendments and Accompanying Remarks are not found to be persuasive for the reasons detailed below. The Examiner acknowledges the receipt of the Information Disclosure Statement on December 15, 2002 and the Supplemental Information Disclosure Statement on May 13, 2002. The Information Disclosure Statements have been properly annotated and copies have been included with this Office Action. The Examiner acknowledges the request for the translation of Italian patent #293049. A copy of the translation was faxed on Tuesday, September 10, 2002 and a copy is included with this Office Action.

### ***Claim Rejections - 35 USC § 112***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1- 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. A discussion of said rejection can be found in paragraph 5 of Paper No. 3.

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1 - 2, 6 - 13, and 19 - 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larry E. Johnson (US 5,817,390) alone or in view of L.W. Johnson (US 3,404,487). A discussion of said rejection can be found in paragraphs 11 - 27 of Paper No. 3.

6. The amendments to claims 1, 3, 5, 7 and 19 do not change the scopes of the claims. The amendments to claims 1, 3 and 19 were made to correct the errors noted in Paper No. 3. The amendments to claims 5 and 7 do not change the meaning or the scope of the claims. Thus, claims 1, 3, 5, 7 and 19 are rejected based on the reasoning presented in paragraphs 11 - 27 of Paper No. 3.

7. Claim 10 has been amended to add "wherein a fin of flexible material is disposed along the outside of said flat pile, where said pile bends about said axis, provides a locking fin which engages said steps along edges of said fin to retain said bent flat pile in said slot". Johnson (US 5,817,390) discloses a pile weatherstripping comprising external fins (Figure 1, reference numbers 28 and 30) disposed along the outside of a flat pile (Figure 1, reference numbers 12 and 14) and a backing strip (Figure 1, reference number 32) which in combination provides a locking mechanism when placed in a slot. The flat pile bends about an axis (as seen in Figure 2).

***Allowable Subject Matter***

8. Claims 6, 14 and 17 – 18 remain objected to as being dependent upon a rejected base claim as set forth in paragraph 28 of Paper No. 3. The claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. The prior art does not teach or suggest providing a rib which is a bead or a filament.

***Response to Amendment***

10. Applicant's arguments filed August 28, 2002, as Paper No. 4, have been carefully considered but they are not persuasive.
11. In response to Applicant's argument that the plies are bent only when inserted into the slot, the claim language does not support that the bending occurs only upon insertion. The pile is simply in a bent state within the defined structure. The applicant argues that only the tensioning and resiliency holds the flat pile in the slot. The claim language does not reflect this argument. Claim 1 only discloses that the flat pile is "tensioned to spring outwardly". Therefore, Applicant's arguments are not commensurate in scope with the claimed invention.
12. In the case of the patent of Johnson (US 5,817,390), the patent does disclose a flat pile in which the file is tensioned to spring outwardly. The Applicant's definition of "flat pile", as defined in claim 1, is "a plurality of strands in a side-by-side relationship, which said strands have resiliency to straighten". In Figure 1 of the patent of Johnson (US 5,817,390), one can see that the left and right sides of the pile are composed of a plurality of strands in a side-by-side relationship. If the internal fin (Figure 1, reference number 22) were removed from Johnson's

structure, the pile would have the capability of straightening due to the composition of the pile and the pile would "spring outwardly". The mode of manufacture of wrapping the pile around a mandrel and ultrasonically welding the backing strip to the pile at the edges of the mandrel is irrelevant to the final product in that there is no language in the current claims to preclude such a structure.

13. The ultrasonic bonding of the pile to the internal and external fins provides a tensioned state. In response to the Applicant's argument that the invention contemplates the use of a locking fin (reference number 18), which lies flat until it is installed. The Examiner understands that the locking fin remains flat prior to installation according to Figure 7C, however, this is not represented in the claims. According to claims 7 and 10, the locking fin "engages said steps along edges of said fin to retain said bent pile in said slot". In claim 8, the locking fin is "of material which is flexible but more rigid than said pile".

14. In response to Applicant's argument that the seals made of rubber or foam is nonanalogous art, it has been held that the determination that a reference is from a nonanalogous art is twofold. First, we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. In re Wood, 202 USPQ 171, 174. In this case, the Applicant's invention and the rubber or foam seals are both utilized to insulate or protect an opening with a door or window from the elements and all are "weatherstripping" in the art.

15. In response to Applicant's argument that no locking fins exist in patents US 5,817,390 and US 3,404,487, the Examiner respectfully argues the contrary. According to claim 7, the Applicant defines the locking fin as an element that must "engage said steps along edges of a

said fin to retain said bent pile in said slot". In US patent 5,817, 390, the Examiner agrees that element 30 in Figure 1 does not act as a locking fin alone. Johnson discloses in Figure 1 the elements 28, 30 and 32. Elements 28 and 30 are known in this particular invention as the first and second external fins and element 32 as the backing strip. These elements together work as a locking fin. In US patent 3,404,487, the Examiner does not suggest that element 14 in Figure 4 acts as a locking fin. Instead, element 10 in Figure 4 is known in this particular invention as a strip and functions as a locking strip as specified by the Applicant. As seen in Figure 4, the weatherstripping is inserted by means of element 10 into the holding slot which retains the pile.

16. In response to Applicant's argument that there is nothing in the references to support the conclusions in paragraphs 12 and 15 of Paper No. 3, the Examiner respectfully argues the contrary. In regards to paragraph 12 of Paper No. 3, Figure 4 in US patent 3,404,487 clearly shows that the pile extends beyond the t-slot. When the pile is crushed by a door or window, a sealing action occurs due to the parting of the pile. In regards to paragraph 15 of Paper No. 3, Figure 1 in US patent 3,404,487 shows that in order to insert the backing strip into a slot, the material must be flexible, however, it must be rigid enough to hold the weatherstrip into the slot. The pile has a significantly smaller width than the backing strip, therefore, it would naturally be more flexible and less rigid than the backing strip.

### *Conclusion*

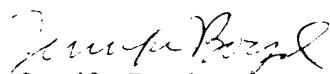
17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 703-305-7082. The examiner can normally be reached on Monday thru Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
Jennifer Boyd  
September 27, 2002

  
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